RESOLUTION NO. 2020-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA ESTABLISHING A STABILIZING LOAN PROGRAM FOR SMALL BUSINESS IN RESPONSE TO THE COVID-19 PANDEMIC, VESTING DISCRETION IN THE CITY MANAGER, CITY FINANCE DIRECTOR AND CITY ATTORNEY TO MAKE REQUIRED CHANGES TO THE PROGRAM GUIDELINES NECESSARY TO IMPLEMENT AND ADMINISTER THE PROGRAM, AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AGREEMENTS AND PROMISSORY NOTES NECESSARY TO IMPLEMENT THE PROGRAM, AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES

WHEREAS, on March 13, 2020, the City Manager in his role as the Director of Emergency Services, issued a “Proclamation of a Local Emergency by City of Marina City Manager Related to the COVID-19 (Coronavirus);” and

WHEREAS, small businesses are in need of assistance as a result of layoffs, temporary business closures, curtailment of operations, and economic disruption during this emergency; and

WHEREAS, on March 17, 2020, the Health Officer of the County of Monterey issued an Order directing all businesses to cease non-essential operations at physical locations in the County; and

WHEREAS, on April 3, 2020, the Health Officer of the County of Monterey issued a second Order clarifying and further limiting business activities, including construction, and again directing all businesses to further cease non-essential operations; and

WHEREAS, the impacts from the COVID-19 virus, the associated measures to protect public health, and regional orders for non-essential businesses to cease operations and the resulting lay-off of employees at these businesses’ physical locations has had a dramatic negative effect on many non-essential small businesses’ financial resources with many such businesses experiencing, or expecting to experience soon, a sudden and unexpected loss of revenue; and

WHEREAS, the impacts from the COVID-19 virus, the associated measures to protect public health, and regional orders for essential businesses to restrict operations and the resulting curtailment of staffing and operations at these businesses’ physical locations has had a dramatic negative effect on many essential small businesses’ financial resources with many such businesses experiencing or expecting to experience soon, a sudden and unexpected loss of revenue; and

WHEREAS, on April 15, 2020, the U.S. Treasury Secretary and U.S. Small Business Administration Administrator announced by law the federal Paycheck Protection Program and Economic Injury Disaster Loan Program will not be able to issue new loan approvals while those programs experience a lapse in funding appropriations and urged Congress to appropriate additional funds for the Paycheck Protection Program which as of that date was unable to process additional loan applications; and

WHEREAS, a small business, that is, a business physically located in the City of Marina since January 2019 with five or fewer employees as of March 1, 2020, that has submitted an application for one or more small business loans may need a very rapid interim response from local agencies, lenders, and support providers to survive the above-described impacts; and

WHEREAS, additional economic impacts are anticipated which may further inhibit small businesses which have not been required to close as a result of the County Health Officer or the State of California's orders due to the coronavirus pandemic from temporarily fulfilling their financial obligations such as paying rent or a mortgage for business premises, paying utility charges for business operations, paying employee wages, and/or paying health benefits for employee(er); and

WHEREAS, additional economic impacts are anticipated which may inhibit small businesses which have been required to close as a result of the County Health Officer or the State of California's orders due to the coronavirus pandemic from temporarily fulfilling their financial obligations for outstanding indebtedness; and

WHEREAS, the City Council anticipates a loss in sales tax revenue as a result of the COVID-19 outbreak due to the temporary or permanent closure and the curtailment of operations of many small businesses; and

WHEREAS, it is in the community's interest to support small businesses which have chosen to locate and operate within the City of Marina by providing access to capital while other sources of state and federal funding are pending; and

WHEREAS, the City has One Hundred Thousand dollars available in its Emergency Fund which could be budgeted to fund the Stabilizing Loan Program for Small Business; and

WHEREAS, the Stabilizing Loan Program for Small Business is necessary to preserve the welfare of citizens of Marina; and

WHEREAS, the Stabilizing Loan Program for Small Business is to be effective as of April 21, 2020; and

WHEREAS, COVID-19 has and will continue to cause conditions of peril to the health, safety, and welfare of the City of Marina.

NOW, THEREFORE, be it resolved by the City Council of the City of Marina that:

A. The City Council hereby finds and determines that the above-described conditions and the conditions described in the Proclamation of Local Emergency related to the COVID-19 outbreak warrant and necessitate the creation of the Stabilizing Loan Program for Small Business and the establishment of this Program is in furtherance of a public purpose and in the best interest of the public.

B. The City Council hereby finds and determines that the commitment of funds to the Stabilizing Loan Program for Small Business will not affect or detrimentally impact maintaining a revenue structure adequate to meet the City's financial requirements for the execution of balanced programs and the basic level of City services necessary to carry out the duties, obligations and mandates required by the Home Rule City Charter of the City of Marina.

C. The City Council hereby finds and determines that providing assistance to small businesses to help them remain viable is in furtherance of securing the City's tax base.

D. The City Council hereby finds and determines that small business' preparations for, response to, mitigation of and recovery from the spread and impact of COVID-19 and the responses thereto require the City to divert resources from normal-day-to-day operation.

E. The Stabilizing Loan Program for Small Business is hereby established and funded with $100,000 from the Emergency Fund in accordance with the program guidelines set forth in the COVID-19 Marina Small Business Loan Requirements attached as **Exhibit A** to this Resolution.

F. The City Council hereby vests discretion in the City Manager, City Finance Director, and City Attorney to make required changes to the program guidelines necessary to effectively implement and administer the program.

G. The City Manager is authorized to execute any agreements necessary to implement the Stabilizing Loan Program for Small Business with all necessary expedience commensurate with the urgency of the COVID-19 impact on the local economy including, but not limited to, loan agreements and promissory notes.

H. The Finance Director is authorized to make necessary accounting and budgetary entries.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 21st day of April 2020, by the following vote:

AYES: COUNCIL MEMBERS: Berkley, Urrutia, O'Connell, Morton, Delgado
NOES: COUNCIL MEMBERS: None
ABSENT: COUNCIL MEMBERS: None
ABSTAIN: COUNCIL MEMBERS: None

____
Bruce C. Delgado, Mayor

ATTEST:

____
Anita Sharp, Deputy City Clerk

Business Loan Program Summary

<u>Program</u>

Total Funding: $100,000

Source: General Fund

Decision Authority: City Determination is final. Additional applications on changed circumstances may allow additional applications.

<u>Loan Terms</u>

Maximum Loan: (To be determined) per business.

Limitation: May not receive residential loan also.

Basis of Loan Amount: Documented delinquent bills for rent, employee wages and health benefits, utilities, or mortgage on business located in Marina if not closed during COVID event. If closed, any unpaid business event during the COVID event.

Interest Rate: 0% if repaid within one year of funding of loan; or,
3% from loan's funding

<u>Qualifications</u>

1. Must have a business license of the City Marina as of January 1, 2019

2. Business must have 5 or fewer employees.

3. Must have a household income (which includes business income) of less than 90% of the Monterey County Median, adjusted for household size as evidenced from Federal Tax returns from 2018 or 2019 or sufficient alternate data.

A.) Adjusted business income requirement limit: 90% of median income for Monterey County

Median Income for Monterey County	**As of 4/16/2020 (90% of HCD Published AMI)**
Household Size	**Income**
1	$46,665
2	$53,370
3	$60,030
4	$66,690
5	$72,045

Calculation		**Example**
2019 or 2018 Business Tax income		130,000
(Depreciation)		15,000
(Owner salary calculated as business expense)		50,000
Adjusted business income	$	195,000
Assume household size is 4 and no other household income.		
If sole proprietor, this exceeds $66,690. Does not qualify		
If owned by three households of 4 with no other income, qualifies		
Divide by three		65000

4. Must have had applied for SBA Economic Injury Damage Loan (EIDL) or Payroll Protection Program Loan (PPP) due to the COVID 19 event.

Potential Alternatives to Program

1. Replace the requirement of 5 or fewer employees with specific business tax categories such as:

   - gross receipts greater than the minimum ($50,000) but less than ($1,000,000):

Under a million in revenues but more than the minimum	
Beauty Parlors & Shops	***6***
Cafes	***1***
General Retail	***5***
Restaurants	***35***
Retail Sales	***64***
Vehicle Business (Inside City Limits)	**4**

2. If recommendation #1 is used, after a certain time, the loan program could expand this by either raising the gross receipt limit or adding business categories.

3. Using this criterion may eliminate the need for qualification #3

4. Set a maximum loan amount such as $10,000, based upon unpaid bills

5. Provide a Maximum Term: 36 months

6. Provide a Minimum payment: 1/20 of original loan, commencing no later than 1 year after loan funding.

EXHIBIT A

CITY OF MARINA
211 Hillcrest Avenue
Marina, California 93933
businessloanapp@cityofmarina.org

COVID-19 MARINA SMALL BUSINESS LOAN REQUIREMENTS

1. Applicant's business must be physically located in the City of Marina since at least January 2019 and must be in possession of a valid Marina Business License for fiscal year 2019-2020.
2. Applications to be submitted to the City with supporting documentation on or before May 31, 2020, or award of loans totaling $100,000.00, whichever occurs first. Completed applications will be processed on a first come, first served basis.
3. Small business is defined as 5 or fewer employees as of March 1, 2020.
4. Applicant must have actually submitted documents for Small Business Loans, such as Economic Injury Disaster Loan (EIDL) or the Payroll Protection Program (PPP), and provide documented proof simultaneously with submission of the loan application.
5. The adjusted gross revenue/income of the business for the calendar year ending 12/31/2019 shall not exceed 90% of the median income in the County of Monterey.
6. Loans must be repaid in full to the City (a) on or before May 31, 2021, or (b) within one (1) year of disbursement, whichever is earlier. Failure to repay the loan as of the due date shall result in interest on the loan from the date of disbursement at the rate of 3% per annum and shall continue to accrue on the unpaid balance until paid in full.
7. Federal tax returns for calendar year 2019 or 2918, or sufficient financial records of business, (i.e. profit & loss, records), for 12 months prior to applying for the loan must be provided by Applicant to the city. Documentation is to be submitted with the Application.
8. Need for loan must be the result of the Coronavirus pandemic.
9. If the business was not required to close as a result of the State and County mandates, loan funds must be applied to outstanding (unpaid) business premises rent, employee wages, business premises utilities (not gasoline for vehicles) and/or employer provided health benefits.
10. If the business has been forced to close down due to it not being considered an essential business, the proceeds are to be applied to the outstanding indebtedness as of the date of the application.
11. All information provided will be maintained confidential.
12. Applications are to be in writing and submitted to the City of Marina by email to businessloanapp@cityofmarina.org or by US Mail or personal delivery to
    Marina City Hall, Attn: Finance Director, 211 Hillcrest Avenue, Marina CA 93933.
13. A decision as to the loan amount, the loan terms, or denial of the loan is final and there is no right for reconsideration or appeal. If an application is denied in its entirety and there is a change in the Applicant's circumstances, nothing herein prevents an Applicant from submitting a new application with supporting documentation.
14. If any member of the applicant's family or living unit received a resident loan from the City of Marina's Resident Loan Program, the application for a loan from the City of Marina's Small Business Loan Program will be denied.

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EXHIBIT A

COVID-19 MARINA SMALL BUSINESS LOAN CHECKLIST

- ☐ Provide proof of physical business address within the City of Marina as of January 1, 2019. Acceptable proof includes:
  - Copy of business license.
- ☐ Provide proof that applicant has submitted application(s) for the Economic Injury Disaster Loan (EIDL) or the Payroll Protection Program (PPP)
- ☐ Provide Federal tax return for calendar year 2018 or 2019. Acceptable proof includes:
  - Copy of federal tax returns
  - Adjusted gross revenue/income of the business for the calendar year ending 12/31/2019 must be no more than 90% of the median income for Monterey County: https://monterey.org/Services/Community-Development/Housing/Annual-Income-Limits

A.) Adjusted business income requirement limit: 90% of median income for Monterey County

Median Income for Monterey County	As of 4/16/2020 (90% of HCD Published AMI)
Household Size	**Income**
1	$46,665
2	$53,370
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5	$72,045

Calculation	Example
2019 or 2018 Business Tax income	130,000
(Depreciation)	15,000
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Adjusted business income	$ 195,000
Assume household size is 4 and no other household income.	
If sole proprietor, this exceeds $66,690. Does not qualify	
If owned by three households of 4 with no other income, qualifies	
Divide by three	65000

- ☐ Submit application on or before May 31, 2020 with supporting documentation.

EXHIBIT A

CITY OF MARINA
211 Hillcrest Avenue
Marina, California 93933
businessloanapp@cityofmarina.org

COVID-19 MARINA SMALL BUSINESS LOAN APPLICATION

1. Business Name: ____
2. First and Last Name (*must have legal authorization to enter into a loan agreement for the business*): ____
3. Business Address:____
4. Mailing Address: (if different from above):____
5. Phone Number: ____
6. Email: ____
7. Number of employees:
   a. Full-time _______________
   b. Part-time _______________

<u>ALL ITEMS BELOW REQUIRE SUPPORTING DOCUMENTATION</u>

8. Requested Loan amount, up to $10,000: ______________________________________

   Items as related to the Marina business location in this application:
   Delinquent Rent or Mortgage Amounts ______________________
   Delinquent Utilities ______________________
   Other (Describe)________________ ______________________
   Total ($5,000 Maximum) ______________________

9. Is your business located in the City of Marina as of January 1, 2019 and as of the date of submission of this loan applicant? ☐ Yes

10. Do you have a valid City of Marina 2019-2020 business license? ☐ Yes

11. Solely due to Coronavirus (COVID-19):
    a. Has your business been closed? ☐ Yes

    --- *or* ---

    b. Has your revenue/income been adversely affected? ☐ Yes

12. Revenue/Income limitations:
    a. Is 2019 calendar year revenue/income equal to or less than 90% of the median income for Monterey County as shown by the chart on the checklist? ☐ Yes

13. Have you received, or will receive ☐ IEDL funds or ☐ PPP funds or ☐ City of Marina Residential Loan Program loan or ☐ other Coronavirus (COVID-19) relief?

CITY OF MARINA
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14. Additional comments:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

15. Signature: ______________________ and Date: ______________________
Place of Signature: ____________________________

NOTE: PLEASE ATTATCH DOCUMENTATION FOR THE FOLLOWING TO THE LOAN APPLICATION:

- Delinquent bills justifying loan
- Proof of business license
- Proof of economic injury
- Proof of revenue/income loss

EXHIBIT A

City of Marina – Stabilizing Loan Program for Small Business

PROMISSORY NOTE

Marina, California

$_______________ [the "Principal Sum"] _____________________ 2020
[the "Date of Disbursement")

This Promissory Note (the "Note") dated ______________, 2020, is made by and between the City of Marina, a California municipal corporation ("Holder") and _______________________ [name of borrower] ("Maker").

1 **Payment Covenant.** For value received, Maker promises to pay to Holder, the Principal Sum of _____________________________ ($____________) and any interest that may accrue pursuant to this Note.

2. **Payments.** Payment in full of Principal Sum in the total amount of $___________ is due on or before May 31, 2021 or within one (1) year of the Date of Disbursement, whichever is earlier (the "Due Date"). Payment shall be deemed late if received after the Due Date.

3 **Interest**. Interest on the loan shall commence on the day following the Due Date and will accrue at the rate of three percent (3%) per annum calculated from the Date of Disbursement and will continue to accrue on the unpaid balance until this Note is paid in full.

4. **No Prepayment Penalty**. Maker may prepay the principal due hereunder at any time prior to the Due Date without premium or penalty.

5. **Default; Acceleration**. The following events and conditions shall constitute a default ("Default") under this Note:

(a) Maker fails to make any payment due under this Note; or

(b) Any of the representations or warranties of Maker set forth herein or in the COVID-19 Marina Small Business Loan Application (the "Application") submitted by Maker proves materially false or misleading.

If a Default occurs under this Note, Holder shall provide written notice to Maker of failure to receive such payment or of a materially false or misleading statement in the Application. If payment is not made within ten (10) days of receipt of said notice, Maker shall be in Default under this Note. If Maker is in Default under the Note, then Holder may, at its sole option, declare all sums owing under this Note immediately due and payable.

6 **Attorneys' Fees**. If either party commences an action against the other to interpret or enforce any of the terms of this Note or because of a breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses, and court costs and other costs of an action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment.

7. **Notice**. Any notices required or permitted to be given hereunder shall be sufficient if in writing and if sent by certified mail, return receipt requested, to the address of the party set forth below, or as subsequently modified by written notice:

Holder: The City of Marina
211 Hillcrest Avenue
Marina, CA 9393
Attn: Finance Director

Maker: __________________________ [Name]
__________________________ [Address]
____
Attn: _____________________

8. **No Waivers**. No previous waiver and no failure or delay by Holder in acting with respect to the terms of this Note shall constitute a waiver of any breach, Default or failure of condition under this Note. A waiver of any term of this Note must be made in writing and shall be limited to the express written terms of such waiver.

9. **Time is of the Essence**. Time is of the essence for each and every obligation under this Note.

10. **Counterparts**. This Note may be executed in one or more counterparts, and when so executed, each counterpart shall be deemed to be an original, and said counterparts together shall constitute one and the same instrument.

11. **Binding Nature**. This Note shall be binding upon and inure to the benefit of the parties hereto. Neither party may assign or transfer any rights or obligations under this Note without the prior written consent of the other party, which consent shall not be unreasonably withheld. If this Note is executed by more than one person or entity as Maker, the obligations of each such person or entity shall be joint and several.

MAKER:

By: _____________________________________

Name: ___________________________________

Title: ____________________________________

EXHIBIT A

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF ______________________________)SS
COUNTY OF ______________________________)

On ____________________________ before me, ________________________________ , Notary Public, personally appeared

____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature __________________________________ Affix appropriate seal above